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The American University in Cairo

School of Global Affairs and Public Policy

**THE RIGHT TO LEISURE THROUGH PLAY
FOR REFUGEE CHILDREN IN EGYPT**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Carrie Leanna Johnson

June 2013

The American University in Cairo
School of Global Affairs and Public Policy

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DEDICATION

This thesis is dedicated to my grandmother, Dr. Mercia J. Hill, who set the bar high, and has been the unfailing encouragement in all of my academic pursuits.

ACKNOWLEDGEMENTS

I would like to thank God above all things, for all blessings and challenges, great and small, that I have faced; for staying faithful to me during good and bad times. He “is my refuge and strength, a tested help in time of need, and so I need not fear, even if the world blows up or the mountains crumble into the sea (Psalm 46:1-2).”

I would like to thank my parents and Cairo family (σας αγαπω πολλυ) for their support, open hearts and good cooking.

Finally, I would like to thank the Cairo refugee community and the students of Futures Elementary School in Oakland, CA. Thanks, for allowing me to share in your struggles, joys and culture, and inspiring me to write this thesis.

The American University in Cairo
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FOR REFUGEE CHILDREN IN EGYPT

Carrie Leanna Johnson

Supervised by Professor Jason Beckett

ABSTRACT

Physical health programs specifically programmed for emotional rehabilitation are an important factor in post-trauma adjustment for refugee children in Egypt. This thesis explores definitions of the Right to Leisure, which can serve as a catalyst for such post-trauma rehabilitation for refugee children. Adequate access to the right to leisure is obstructed, however due to State-wide economic weaknesses, the failed implementation and reservations to various international treaties, xenophobia and discrimination, and the vast privatization of recreation spaces. Nonetheless, Egypt has consented to sharing international responsibility to safeguard the right to leisure for refugee children per several international treaties: the Convention on the Rights of the Child and the Refugee Convention. Egypt has also consented to similar rights expressed in the International Covenant of Economic and Social Rights and the African Charter. Considering Egypt's economic incapacity, the State should act in good faith by vowing to not interfere with entities working to realize the right to leisure within the country. In fact, the Egyptian State must coordinate efforts with international organizations, universities and civil society to create access to the right to leisure within the country.

TABLE OF CONTENTS

I.	Introduction	1
II.	Leisure.....	8
	A. Defining Leisure.....	8
	B. Leisure for Refugee Children in International Law.....	12
III.	No Play Zone	20
	A. Who Is to Blame?	20
	B. First World System, Third World State	22
	C. Egypt's Economic Incapacity	27
	D. Legal Obstacles	32
IV.	Making A Way for Play	34
	A. Leisure in Egypt	34
	B. Leisure for Refugee Children	36
	C. Non-State Response	37
V.	Conclusion	46

I. Introduction

Sport has had a significant impact on societies throughout history. During the days of the Ancient Olympic Games, a mandatory Peace Treaty was instated in order to allow athletes and spectators safe passage through foreign lands.¹ At other times, sporting events have incited mass violence, such as the tragic events that ensued during the Port Said Massacre in Egypt in 2012.² Nonetheless, sport has the ability to excite individuals and arouse entire nations. In fact, the physiological changes that occur during participation in sports have been scientifically hypothesized to affect behavior and mood. Increased levels of adrenalin, endorphins and various neurotransmitters, during prolonged physical activity, may be responsible for inducing what is known as a “runner’s high”—a feeling of bliss or euphoria.³ The chemical cocktail produced during exercise has enough impact to affect not only health and fitness, but also one’s mental state of satisfaction and enjoyment.⁴

Such an accessible remedy for emotional and physical trauma is exactly what refugee children in Cairo need. The United Nations Office of Sport for Development and Peace (UNOSDP) states that,

Sport has been increasingly recognized and used as a low-cost and high-impact tool in humanitarian, development and peace-building efforts, not only by the UN

¹ During the season of sporting at Olympia, Delphi, Nemea and Corinth, athletes were permitted to cross between foreign lands safely due to the highly enforced treaties, which called for peace during this time. *See at:* <http://www.olympic.org/ancient-olympic-games?tab=History> [accessed 11 May 2013].

² “It was unclear whether intense sports rivalries or political strife caused the clashes. However, many supporters blamed the tragedy on the ruling junta that they said had failed them after the overthrow of former ruler Hosni Mubarak on February 11, 2011.” Mohamed Fadel Fahmy, *See at:* <http://edition.cnn.com/2012/02/02/world/africa/egypt-soccer-deaths-color/> [accessed: 11 May 2013]. Gwenda Blaire, “What’s behind a ‘Runner’s High?’ Shape, Feb2005, Vol. 24 Issue 6, p. 98-100. *See at:* http://tr6rt9pf7u.search.serialssolutions.com/?ctx_ver=Z39.88-2004&ctx_enc=info%3Aofi%2Fenc%3AUTF-8&rft_id=info:sid/summon.serialssolutions.com&rft_val_fmt=info:ofi/fmt:kev:mtx:journal&rft.genre=article&rft.atitle=what%27s+behind+RUNNER%27S+HIGH%3F&rft.jtitle=Shape&rft.au=Gwenda+Blair&rft.date=2005-02-01&rft.issn=0744-5121&rft.volume=24&rft.issue=6&rft.spage=98&rft.externalDBID=ISHP&rft.externalDocID=786211821 [accessed 11 May 2013].

⁴ *Id.*

system but also by non-governmental organizations (NGOs), governments, development agencies, sports federations, armed forces and the media.⁵

In addition to its accessibility, sport is also inclusive, offering a variety of activities for persons of all ages and ability. Sport on a mass scale can change the lives of refugee children, as well as: “child soldiers, victims of conflict and natural catastrophes, the impoverished, persons with disabilities, victims of racism, stigmatization and discrimination, persons living with HIV/AIDS, malaria and other diseases.”⁶ The UN Inter-Agency Task Force on Sport for Development and Peace defines sport, as,

All forms of physical activity that contribute to physical fitness, mental well-being and social interaction, such as play, recreation, organized or competitive sport, and indigenous sports and games.⁷

The graciously broad definition lends itself to include an array of activities such as water aerobics for even the paraplegic refugees. By participating in sports, refugee children in Cairo can receive an engaging form of therapy that can rehabilitate them in their young lives. According to the Sport for Development and Peace International Working Group, sport is seen to have the most benefits in,

Individual development, Health promotion and disease prevention, Promotion of gender equality, Social integration and the development of social capital, Peace building and conflict prevention/resolution, Post-disaster/trauma relief and normalization of life, Economic development, Communication and social mobilization.⁸

Clearly, sport is powerful and the Right to leisure provides a doorway through which refugee children in Egypt can harness this power of play.⁹

The importance of the Right to leisure in relation to trauma therapy cannot be overstated. Physical therapy plays an important role in manifesting the progresses of psychological improvement and in the end, improves the possibility for integration into the society of

⁵ The United Nations Office of Sport for Development and Peace Website: “Why Sport?” *See at:* <http://www.un.org/wcm/content/site/sport/home/sport> [accessed 11 May 2013].

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ “The Power of Play” is a motto of the national organization named, Playworks (formerly Sports4Kids), in the U.S.A. www.playworks.org.

the host country. Unfortunately, as idle time increases, due to the absence of an organized daily program, so does the likelihood of vagrancy and crime. Many unaccompanied children join “gangs” in an attempt to create a new family and sense of belonging in the host-country.¹⁰ Various NGOs working with refugees in Egypt indicate the difficulty for refugees to locally integrate into Egyptian society.¹¹ The main reason for this difficulty is Egypt’s reservations to the 1951 Refugee Convention stating,

The competent Egyptian authorities had reservations because these articles consider the refugee as equal to the national. We made this general reservation to avoid any obstacle which might affect the discretionary authority of Egypt in granting privileges to refugees on a case-by-case basis.

This reservation refers to the articles of the 1951 Refugee Convention that allow refugees in Egypt to nationality, work, education and identification. In short, the “competent Egyptian authorities” have legally refused refugees the possibility of locally integrating into Egyptian society for long-term scenarios. Instead, the government has transformed “rights” into “privileges,” that are not guaranteed to each recognized refugee. However, since it is the UNHCR, and not the Egyptian Government which processes refugee claims in Egypt, this reservation creates an impossible situation for refugees to guarantee healing from persecution, let alone thrive in. Refugee NGOs such as Africa and Middle-East Refugee Assistance (AMERA) have gathered testimonies that display how a difficult life is exacerbated for refugee children in Egypt.¹² Many children stay inside for days and

¹⁰ “Those who call themselves ‘gang’ members offer a new way of understanding collective representation amongst [refugees] in Cairo and, however potentially misguided, an alternative, refugee-generated means of ensuring protection and assistance for those unable or no longer willing to rely on UNHCR or the Egyptian government.” *See in: Forced Migration Review*, “Sudanese Refugee Youth Gangs in Cairo,” 09/2009, Vol. 33, p. 52.

¹¹ These challenges include learning a new language, adapting to new modes of being and behaving, becoming accustomed to new occupational and educational systems, and appropriating values and norms often in contradiction with those of the country (Sabbah, 2007). In addition, discrimination, racism, and alterations in gender role may negatively influence the process of cultural adjustment (Bemak, Chung, & Pederson, 2003). Hani M. Henry (2012): *African Refugees in Egypt: Trauma, Loss, and Cultural Adjustment*, *Death Studies*, 36:7, 58. *See at:*

<http://www.tandfonline.com/doi/pdf/10.1080/07481187.2011.553330>

¹² During my eight month internship at AMERA, I interviewed more than two dozen unaccompanied child asylum-seekers. 100% of applicants that I interviewed had been kidnapped and trafficked, and feared re-imprisonment by the Egyptians Bedouins. The refugee children associated the men wearing *galibeyyas* in Cairo with their former kidnappers. As a result, the children did not go outside alone, and were in constant fear of being kidnapped. *Also see: UN High Commissioner for Refugees, A responsibility to protect: UNHCR and statelessness in Egypt*, January 2013, ISSN 1020-7473, available at: <http://www.unhcr.org/refworld/docid/510fa7562.html>

only leave the house once a week to get groceries. They are alone, fearful of being re-kidnapped and do not understand the local language.”¹³ The non-Arabic speaking children who are seeking asylum are of particular concern, as they face the danger of remaining in a protracted refugee status in a country that refuses to avail them social integration and mental rehabilitation.

Egypt hosts nearly half of a million refugees from Africa and Asia, many of whom are children,¹⁴ unaccompanied, and separated from their family.¹⁵ These traumatized refugee children arrive to the chaotic metropolis that is Cairo hungry and homeless, unable to communicate with the crowds around them.¹⁶ The fleeing children who are fortunate to make it to Cairo unharmed by violent traffickers may live for weeks in a public mosque before being directed to a charitable organization or the offices of the United Nations High Commissioner for Refugees (UNHCR).¹⁷ Many other children, however, arrive to Cairo after barely escaping the vices of sadistic and torturous kidnapers in the sandy Sinai. In November of 2011, The CNN “Freedom Project” reported extensively on the phenomenon of organ trafficking in Egypt’s Sinai desert. CNN reported that “refugees -- from places like Ethiopia, Eritrea or Sudan -- are enslaved and tortured and the women raped if they cannot come up with the large sums of money the Bedouin try to extort from them and their families to smuggle them into Israel.”¹⁸

Upon arriving at the unwelcoming, heavily barricaded UNHCR office, the asylum-seeking child is ushered through the cold and barren hallways of the UNHCR building, herded from room to room to undergo assessments by dozens of UNHCR Eligibility

¹³ Citation from Statistics and Documents from Africa and Mid-East Refugee Association (AMERA).

¹⁴ Letters to the Editor, “Iraqi Psychiatrist in Exile Helping Distressed Iraqi Refugee Children in Egypt in Non-Clinical Settings,” *Journal of the Canadian Academy of Child & Adolescent Psychiatry*, 2010, Vol. 19 Issue 2, May 2010, p72-73.

¹⁵ The number of registered refugees in 2013 totaled 114,085, as many refugees do not understand the UNHCR system and fear registration information will be shared with their governments. *Statistics found at: 2013UNHCR Country Operations Report- Egypt: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356>*

¹⁶ Letters to the Editor, “Iraqi Psychiatrist in Exile Helping Distressed Iraqi Refugee Children in Egypt in Non-Clinical Settings,” *Journal of the Canadian Academy of Child & Adolescent Psychiatry*, 2010, Vol. 19 Issue 2, May 2010, p72-73.

¹⁷ *Id.*

¹⁸ Fred Pleitgen and Mohamed Fadel Fahmy, “Refugees face organ theft in the Sinai,” 3 Nov. 2011, *See at: <http://edition.cnn.com/2011/11/03/world/meast/pleitgen-sinai-organ-smugglers/>*

Officers who will not remember the child's name.¹⁹ Rarely are asylum-seeking minors educated about their human rights and the refugee status determination (RSD) process, leaving them even more perplexed about their immediate future. By the end of the day, the child is placed with a temporary family from her/his country of origin (COI), who may or may not speak the same language, and who may or may not be from a rival clan. Furthermore, the UNHCR office in Cairo is located in the distant suburb of 6th of October City, creating a taxing financial burden on the already financially distressed asylum-seeking child.²⁰

The most devastating blow to the protection availed to refugee children is the UNHCR budget cut that will occur in 2013. The budget cut will result in denial of education grants for children, health care services, vocational training, and other life-saving financial assistance.²¹ Upon arrival, unaccompanied children are given an already paltry emergency stipend to cover the cost of food and rent in the foster home. The budget cut will most certainly place more stress on the newly arrived victims of persecution as they seek assistance and protection from the UNHCR office in Egypt.

Obviously, this does not describe an ideal circumstance for the vulnerable refugee children, though they quickly learn to accept that Cairo does not have much else to offer them. Refugee children find it nearly impossible to gain admission to the government schools because of language barriers and discrimination. All government schools provide instruction in Arabic, which presents an immediate obstruction for most refugee children

¹⁹ "While [Egypt] is signatory to the 1951 Refugee Convention and its 1967 Protocol, domestic asylum procedures have yet to be developed. Meanwhile, UNHCR continues to carry out registration and refugee status determination processes (RSD)." The Staff at the UNHCR office in Cairo are over worked due to the steadily increasing arrival of Refugees from Syria and the Sudans. To make matters even worse, "the budget for Egypt has gone down from USD 24.7 million in 2012 to USD 23.4 million in 2013." The decrease in budget does not relieve the office staff who must deal with an increase of applicants. UNHCR Country Operations Profile, Egypt, *See at:* <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356>

²⁰ A microbus ride from *El Es'af* in Downtown Cairo to the UNHCR costs approximately 15le round-trip. The average monetary assistance received by a refugee child from the UNHCR is 400le per month. Usually, the refugee child pays 200LE for rent to their caregiver, and spends additional portions of their monthly assistance fund on food, and transportation.

²¹ UNHCR Country Operations Profile, Egypt, *See at:* <http://www.unhcr.org/50a9f826b.html>

(not coming from Sudan).²² Since school is the sanctuary where a child's character, intelligence and social competences are developed,²³ refugee children in Egypt are immediately disadvantaged in their chances of survival. Additionally, physical education routines of primary and secondary schools ensure the strong physical and mental welfare. Since refugee children are denied this opportunity, their bodily and psychological wellbeing are put in jeopardy. Refugee children require special therapeutic programs that target the various physical and emotional traumas that many experience en route to Cairo.²⁴ Intentional forms of rehabilitation must be designed for refugee children to overcome the events which led to fleeing the country of origin, separation from family members, and the journey and adjustment to the asylum host country.²⁵

Understanding of the relationship between mental and physical health dates back to the sixth century B.C., when the Greek philosopher Thales of Miletus said, "*Mens sana in corpore sano.*"²⁶ This translates to, "A healthy mind in a healthy body." Both mental and physical health are necessary components in natural development, and especially so for young victims of persecution. The importance of physical health can be seen in the

²² "For the urban poor, school fees, uniforms, books and other school materials may be unaffordable and transportation may be too time-consuming and unsafe. At the same time, city-based refugee children often have to compete with local students for limited places in schools. Legal provisions prohibiting refugees – especially those without recognized legal status – from enrolling in public schools are not uncommon, nor is discrimination on the part of school administrators, teachers and even local students." Amr Hamdy, ICT in Education in Egypt, Survey of ICT and Education in Africa (Volume 2): 53, p. 25, Country Reports, December 2007, UNESCO Institute of Statistics, 2008, See at: <http://www.infodev.org/en/Publication.399.html>

²³ "UNHCR's guidelines on urban refugees emphasise [sic] the promotion of self-reliance among refugees, with education and vocational training initiatives designed to support the acquisition of the essential life skills that can enable urban refugees to become autonomous members of their host societies." Marisa Ensor, "Education and Self-Reliance in Egypt," p.25, See at: <http://www.unhcr.org/4ab356ab6.html>

²⁴ "Children who are refugees of war are exposed to traumatic stressors in pre-migration, flight, and resettlement that affect their psychological well-being and development. These stressors include direct exposure to war time violence and combat experience, displacement and loss of home, malnutrition, separation from caregivers, detention and torture, and a multitude of other traumatic circumstances that detrimentally affect children's health, mental health and general well being," Letters to the Editor, "Iraqi Psychiatrist in Exile Helping Distressed Iraqi Refugee Children in Egypt in Non-Clinical Settings," Journal of the Canadian Academy of Child & Adolescent Psychiatry, 2010, Vol. 19 Issue 2, May 2010, p72.

²⁵ "Many Southeast Asian refugees in the United States exhibited serious psychiatric problems stemming from trauma that occurred before and after emigration. Prior to home departure, many refugees may experience trauma as a result of murder of significant loved ones, rape or sexual abuse, brain washing, kidnapping, and isolation from others (Schweitzer, Melville, Steel, & Lacherez, 2006)." Hani M. Henry (2012): African Refugees in Egypt: Trauma, Loss, and Cultural Adjustment, Death Studies, 36:7, p. 585. See at: <http://www.tandfonline.com/doi/pdf/10.1080/07481187.2011.553330>

²⁶ Herodotus; *Histories*, A. D. Godley (translator), Cambridge: Harvard University Press, 1920; See Online version at the Perseus Digital Library.

facts that the “Right to leisure and Rest” is codified in various international treaties including: The Convention on the Rights of the Child (CRC),²⁷ the Universal Declaration of Human Rights (UDHR),²⁸ and the 1951 Refugee Convention (Refugee Convention).²⁹ Though a few NGOs in Cairo provide psychological treatment, there are few opportunities through which refugee children can receive therapy that promotes physical health and trauma rehabilitation.

II. Leisure

A. Defining Leisure

Leisure elicits various images from lavish imagery of white, sandy beaches, cool breezes and tropical beverages to simple activities such as sleep or a picnic in the park. Regardless of a person’s age or economic class, “leisure” means personal time to spend as one wishes without the interference or imposition by another. This can include reading a book at home or sitting in a café with friends. Leisure represents, exceptional

²⁷ Convention on the Rights of the Child, UN G.A. Res. 44/25, 20 Nov. 1989, New York.

²⁸ Universal Declaration of Human Rights, G.A. Res 217 A, 10 Dec. 1948, Paris.

²⁹ Convention Relating to the Status of Refugees, G.A. Res. 2198 (XXI), 28 July 1951, New York.

periods of pleasure and relaxation, during which one is idle from the control of others, and engaged in a self-determined activity.³⁰ Leisure may be regarded in an extraordinary way because it does not exist as a regular part of the human cycle of life. For instance, where the common American pattern of work-sleep-eat-work again exists, leisure usually does not. Partaking in leisure also often involves the ability to allocate time and funds, two items that many people do not freely possess. Free or idle time is usually usurped by work and funds relegated to food, rent and other survival necessities. Thus, people often regard leisure as a special endowment.

In the context of refugee children, the above understanding of the Right to leisure does not elicit plausible application. Instead, the Right to leisure is more closely linked to play, as an essential component to a proper childhood development. Leisure for children and subsequently the play have been linked to behavior and personality since the time of Plato,³¹ and have been the topics of Rousseau³² and Freud,³³ as well.

Commentary on the *travaux preparatoires* “show[s] the intended aim of the particular rights of the child laid down in Article 31 [of the Convention on the Rights of the Child] is to promote and protect the child’s development.” The Right to leisure (and play) requires the active involvement of the protecting entity, which must facilitate the correct physical, emotional and social development of the child. The primary subject of international law being the State would mean that the Egyptian government is the main protecting entity in this case. In addition to the active involvement of a government or other responding institution, ensuring proper child development requires the allocation of adequate recreation area and resources.

³⁰ The Most recent article titles in the latest volume of the journal, “Managing Leisure,” refer to: Tourism, Recreation Areas, Western European Sport Clubs, and Young Women’s Engagement in Physical Activity. The focus on recreation and physical activity draws a clear link between “Leisure,” being the name of the journal, and amusement, being the focus of the journal’s content. “Managing Leisure,” vol. 18.1, *See at:*

³¹ “You can discover more about a person in an hour of play than in a year of conversation.” Plato, 429-347 B.C.

³²“In books I and II, Rousseau insists that young children in the Age of Nature must emphasize the physical side of their education. Like small animals, they must be freed of constrictive swaddling clothes, breast-fed by their mothers, and allowed to play outside, thereby developing the physical senses that will be the most important tools in their acquisition of knowledge” *See: Sparknotes.com: Jean-Jacques Rousseau, Emile, or On Education.* Translator: Allan Bloom, New York, Basic Books, 1979.

³³ Sigmund Freud, *The 'Wolfman' and Other Cases*, trans. Louise Adey Huish, Penguin 2002

The fundamental definition of “leisure” implies something much more basic and accessible. The Oxford English Dictionary³⁴ defines “leisure” as a verb or noun meaning: “the state of having time at one’s own disposal,”³⁵ This definition fits the common understanding of leisure as owning and controlling one’s personal time. This definition also simply affords one the ability to fully control a period of her or his life without interference of another party. In this sense, leisure acts as a catalyst for developing a sense of ownership, which later becomes necessary in demanding personal human rights. This controlled period could be used lying on an exotic beach, but for most, the Right to leisure does not manifest as lavish vacations. Especially for children, leisure is synonymous to: fun, play, games, happiness and enjoyment.

Leisure is not necessarily about the experience of the specific activity, but simply the freedom to actually have the time to choose the activity in the first place. In a sense, this is much like the difference between voting for a favored candidate, and having the means to travel to the polling station to cast a vote. Here, leisure is as much about actually *having* free time as it is about *enjoying* free time. In the case of refugee children, the host-country must avail the children the actual opportunity to experience and access leisure. Per the conventions, the State should play an active, even if minimal, by making sure that its policies and actors do not impeded access to this right. However, as will be discussed in the next pages, Egypt instead actively obstructs the opportunity to access leisure for refugee children.

Based on the above definition, leisure involves two important components: (1) freedom to choose, and (2) engagement in some system of control and release. Considering these two points, Daniel Kramer compares the definition of leisure to the rights implied in the 13th Amendment of the U.S. Constitution,³⁶ which abolished slavery in U.S. Territories. Section one of the Amendment outlaws “slavery” and “involuntary servitude.” In essence, the first section of the amendment endows African-Americans with the first

³⁴ Oxford English Dictionary Online, www.oed.com

³⁵ Oxford English Dictionary, *Supra note 35*, “Leisure.”

³⁶ U.S. Const. amend. 13.1 and 13.2.

element needed to exercise the right to leisure—freedom from occupation. Section two of the 13th Amendment prevents one person from having “legal control over another,” identifying African-American slaves as being engaged a system of “control and release.” From these two sections, Kramer argues that “a life spent in constant toil that one has no genuine opportunity to escape is at least *metaphorically* [sic] slavery.”³⁷ Thus, a life without leisure is practically equal to a life of slavery.

As for the second element: choosing not to work, and thus, the freedom to manage free-time are, by nature of the predicament, infrequent during slavery. This cause and effect relationship also creates the conscious or unconscious freedom to choose how one’s free-time is spent. As explained by Kramer, the Right to leisure cannot exist in the same environment as slavery, as one is the antithesis of the other. When compared to slavery, the Right to leisure appears much more than just a vacation or naptime, but instead an imperative right which acts as an indicator of non-slave status.

The child’s Right to play did not appear until 1983.³⁸ However, the child’s Right to Rest and Leisure was first suggested in 1978.³⁹ Historically, the Right to leisure in international law has always been defined closely with the Right to play and Recreation as well as the Right to Cultural Life and the Arts.⁴⁰ However, the only international documents that explicitly express such rights are the Convention on the Rights of the Child and the African Charter, both of which Egypt is party to.⁴¹ Other international conventions, such as the Convention on Economic Social and Cultural Rights

³⁷ David C. Kramer, “The Constitution and the Right to leisure,” *The Good Society* Vol. 10, No. 2, 2001, pg 65, Penn State University Press, *See at:* <http://www.jstor.org/stable/20711032>

³⁸ “The Government of Canada proposed in 1983 to include in the original text a reference to the “right to rest and leisure, to engage in plan and recreation and to freely participate in cultural life.” This proposal was discussed during the eighties by the Working Group established by the UN Commission on Human Rights...and progressively evolved towards the final text of Article 31 [of the CRC]’ *The African Charter, Article 12, 1990, See in: Paulo David, A Commentary on the United Nations Convention on the Rights of the Child, Article 13: The Right to leisure, Play and Culture*, Office of the High Commissioner for Human Rights, Martinus Nijhoff Publishers, Leiden, Boston, 2006, p.6.

³⁹ *Id.*

⁴⁰ Paulo David, *A Commentary on the United Nations Convention on the Rights of the Child, Article 13: The Right to leisure, Play and Culture*, Office of the High Commissioner for Human Rights, Martinus Nijhoff Publishers, Leiden, Boston, 2006, p.4.

⁴¹ African Charter, Art 27, *Supra* note 41, p.3.

(ICESCR),⁴² and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁴³ refer to similar rights to rest from work. Some conventions specify the Right to Rest that is in explicitly in relation to work. For example, Article 7(d) of the ICESCR specifies, “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”⁴⁴ Alternatively, some conventions such as the International Labor Organization’s Convention No. 79 and No. 90 induct a specific length of rest for children under a certain age. Article 2 of Convention No. 79 states that “Children under fourteen years of age... shall not be employed nor work at night during a period of at least fourteen consecutive hours.”⁴⁵ Similarly, ILO Convention No. 90 states that children under the age of eighteen should not work between ten o’clock at night and seven o’clock in the morning.

Similar provisions for Leisure, Rest, Play and Culture and Arts are expressed in various regional instruments. The American Convention on Human Rights in the area of Economic, Social and Cultural Rights and the European Social Charter both include references to “weekly rest periods”⁴⁶ and “rest, leisure and paid vacations.”⁴⁷ Likewise, the African Charter on the Rights and Welfare of the Child, which Egypt is party to, avails children the exact same Right to leisure as the Convention on the Rights of the Child.⁴⁸

B. Leisure for Refugee Children in International Law

The Right to leisure is expressed in three international conventions which directly affect refugee children in Egypt: The Universal Declaration of Human Rights (UDHR),⁴⁹ The Convention on the Rights of the Child (CRC),⁵⁰ and the 1951 Convention on the Status of

⁴² ICESCR Art. 7.d, *Supra* note 41, p.3.

⁴³ CEDAW, Art. 13, *Supra* note 41, p.4.

⁴⁴ ICESCR, Art. 7.d, *Supra* note 41, p.3.

⁴⁵ International Labour Organization, Convention No. 70, *Supra* note 41, p.4.

⁴⁶ The European Social Charter, Art. 2.5, 2004, *Supra* note 43, p.5.

⁴⁷ The American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), *Supra* note 43, p.5.

⁴⁸ The African Charter, Article 12, 1990, *Supra* note 43, p.5.

⁴⁹ UDHR, *Supra* note 29, Art 24.

⁵⁰ CRC, *Supra* note 28, Art 31.

Refugees (Refugee Convention).⁵¹ These three Conventions exist for varying purposes, yet attempt to avail similar protection and opportunities to refugee children.

The Universal Declaration of Human Rights was approved by forty-eight States on 10 December 1948.⁵² The acceptance of the Universal Declaration of Human Rights was the first time that “the organized community of nations had made a Declaration of human rights and fundamental freedoms.”⁵³ This monumental collaboration resulted in a collection of “human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.”⁵⁴ Accordingly, the declaration *should* apply equally to adults and children, and refugees and non-refugees. Amid the dissipating turmoil of the Second World War, the UDHR boldly pronounced that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁵⁵ Establishing a guise of human equality was important for the Western Powers who had just witness the vile destruction of systematic of discrimination. While the world was suffering the pain of physical and emotional wounds of the Second World War, the UDHR attempted to bandage the world and prevent further systematic corruptions. That meant that refugee children fleeing the terrors of persecution should be able to find sanctuary and equal treatment in the county of refuge. Thus, the UDHR was formed out of explicit orders written in the United Nations Charter.⁵⁶ The thirty articles of the Declaration proceed to lay the cornerstones of Human Rights: (1) the inalienable birthright to liberty and equality, (2) non-discrimination in the enjoyment of human rights and fundamental freedoms, and (3) indispensable economic, social and cultural rights.⁵⁷ The small group of drafters of the UDHR succeeded in creating a document that would

⁵¹ Refugee Convention, *Supra* note 30, Art. 24.

⁵² UNHCR Fact Sheet No.1, International Bill of Rights, *See at:*
<http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ United Nations, *Charter of the United Nations*, Article 68, 24 October 1945, 1 UNTS XVI, *See at:*
<http://www.refworld.org/docid/3ae6b3930.html> [accessed 15 May 2013].

⁵⁷ UNHCR Fact Sheet No.1, *Supra* note 53.

serve to “measure the degree of respect for, and compliance with, international human rights standards everywhere on earth.”⁵⁸

On this thesis, the UDHR provides protection for refugee children from a status of undignified living. Article 24 of the UDHR even states that, “everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”⁵⁹ The right to leisure was one of the world’s original human rights principles, and was important enough to be included the first time that the global community joined to draft a doctrine of standard human values. Unfortunately, the simple act of encoding such values did not ensure their manifestation.⁶⁰ Instead, in practice, access to the UDHR’s declaration of the Right to leisure is much more difficult to access for refugee children. Unfortunately, the right has not materialized for refugee children in Egypt, which is signatory to both of the UDHR’s accompanying treaties: The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.⁶² Egypt has yet to create domestic legislation for refugees,⁶³ and hampers the emotional and physical development and rehabilitation of many refugee children by not allowing them access to government schools,⁶⁴ where the majority of childhood leisure activities take place.⁶⁵ Since, the majority of refugee children cannot enroll in the, government schools, their chances of accessing the right to leisure are

⁵⁸ *Id.*

⁵⁹ UDHR, *Supra* note 29, Art. 24.

⁶⁰ Many scholars opposed the idea of “equal rights” or “rights” all together. The philosopher Friedrich Nietzsche, wrote, “The great majority of men have no right to existence, but are a misfortune to higher men.” *See in* Sec. 872 Notebook W I 1. Spring 1884,

http://www.gutenberg.org/catalog/world/readfile?fk_files=1511558

⁶¹ Civil law jurisdictions recognize [sic] custom as “the other source of law...Yet they tend to dismiss custom as being of slight importance compared to legislation Georgiadis, *General Principles of Civil Law*, 19; Washofsky, *Taking Precedent Seriously*, 7

⁶² UNHCR Fact Sheet No.1, *Supra* note 53.

⁶³ UNHCR Country Operations Profile – Egypt, 2013. *See at:* <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486356>

⁶⁴ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at:

<http://www.unhcr.org/refworld/docid/3be01b964.html> [accessed 4 March 2013]

⁶⁵ “The Right to play” is an international organization that “partner[s] with Ministries of Education to promote policy change, curriculum development, and teacher training. Together, we tackle basic education and child development needs. [Their] work focuses [sic] on four development impact areas: basic education and child development, health promotion and disease prevention, conflict resolution and peace education, and community development.” The organization works to reform physical education in schools, where children spend at least 6 hours each day. *See at:* www.righttoplay.com “Program Resources”

severely limited. This occurrence is not surprising, as many of the Declarations' principles were not honored even decades after its issuance in other regions of the world.⁶⁶ In 1964, while representing Cuba before the UN, the revolutionary Ernesto "Che" Guevara spoke the following,

The brutal policy of apartheid is applied before the eyes of the nations of the world. The peoples of Africa are compelled to endure the fact that on the African continent the superiority of one race over another remains official policy, and that in the name of this racial superiority murder is committed with impunity. Can the United Nations do nothing to stop this?⁶⁷

It would be thirty more years until the regime that legalized Apartheid in South Africa would be replaced and the principle that "all humans are equal" would be implemented.⁶⁸

The Right to leisure also appears in Article 31 of the Convention on the Rights of the Child (CRC). The CRC is the successor to the Declaration on the Rights of the Child (DRC)⁶⁹ which entered into force on November 20th, 1989, and November 20th 1959 respectively.⁷⁰ Article 31 states that, "Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."⁷¹ This article was inspired by a version of the same treaty that had been submitted by Poland in the same year, and was also included in the original 1959 DRC.⁷² The seventh principle of the 1959 DRC that, "the child shall have full opportunity for play and recreation, which should be directed to the same purposes as education."⁷³ It is made clear here that leisure for children is distinct from adults. The Child Convention includes the Right to leisure to limit child exploitation in work and promote healthy child development. This purpose is in contrast

⁶⁶ For example, one of the cornerstones of the UDHR is the equality of human beings. However, the legal policy of racial segregation continued until the 1970's in the United States, and until the 1990's in South Africa.

⁶⁷ Ernesto "Che" Guevara, Cuban Representative, "Colonialism is Doomed," 19th General Assembly of the UN, New York City, 11 December 1964.

⁶⁸ "De Klerk dismantles apartheid in South Africa". BBC News. 2 February 1990. *See at:* http://news.bbc.co.uk/onthisday/hi/dates/stories/february/2/newsid_2524000/2524997.stm

⁶⁹ UN G.A. Res 1386 (XIV), 20 Nov 1959.

⁷⁰ UN Audiovisual Library, CRC, *See at:* <http://untreaty.un.org/cod/avl/ha/crc/crc.html>

⁷¹ CRC, *Supra* note 28, Art. 31.

⁷² Brownlie, Ian, and Godwin-Gill Guy S., *Basic Documents on Human Rights*, Fourth Edition, Oxford University Press, 2002, p.240.

⁷³ CRC, *Supra* note 28.

to the Right to leisure expressed in the UDHR, which seeks to simply prevent exploitation in work or even enslavement. The international community appeared concerned with reserving the right to leisure and play for children throughout the forty-one years between the writing of the 1959 DRC and the Convention on the Rights of the Child. Even Egypt acquiesced to the many provisions of the CRC, making reservations only to the articles concerning adoption, stating these articles conflicted with Shariah Law.⁷⁴

This long-standing view of the Right to leisure as a “principle” directs proponents of the Convention to maintain leisure as a fundamental entitlement to the environment of the child. Nonetheless, advocates of the UDHR and CRC continue to find themselves confronted with domestic politics, legislation and reservations of the State Parties. Despite Egypt’s openness to the ideas of the UDHR and the CRC, there are few places in Egypt where refugee children can actually exercise the right to leisure expressed in the above and other documents.

Finally, the 1951 Refugee Convention attempts to recognize the specific needs of persons fleeing persecution, by incorporating a version of the Right to leisure, as well. Though the convention was initially intended to recognize only a narrow group of refugees who had been forced to migrate due to the events of World War II, it was eventually expanded to include other categories of refugees in 1967.⁷⁵ Article 24 of the Refugee Convention states that, “The Contracting States shall accord to refugees...holidays with pay, [and] restrictions on home work.”⁷⁶ However, due to the status imparted upon them, refugee

⁷⁴ Convention on the Rights of the Child, UN G.A. res. 44/25, Reservations, “On 31 July 2003, “The Government of Egypt informed the Secretary-General that it had decided to withdraw its reservation made upon signature and confirmed upon ratification in respect of articles 20 and 21 of the Convention. The reservation read as follows: Since The Islamic Shariah is one of the fundamental sources of legislation in Egyptian positive law and because the Shariah, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law. The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.”

⁷⁵ Brownlie, Ian and Godwin-Gill Guy S., *Basic Documents on Human Rights*, Fourth Edition, Oxford University Press, 2002, p.112.

⁷⁶ Refugee Convention, *Supra* note, Art. 24.

children are subsequently legally barred from receiving equal treatment to that of citizens of the Arab Republic of Egypt. This restriction is expressed in the reservations that Egypt made to the 1951 Refugee Convention.”⁷⁷ This reservation embodies the xenophobia and its resulting discrimination that continue to complicate the ability to integrate for asylum-seeking and refugee children in Egypt.⁷⁸ Due to this unfavorable cultural response of the Egyptian authorities, refugee children face a disconcerting form of marginalization.⁷⁹

The Refugee Convention contains multiple articles which intend to secure a durable solution for refugee children in the form of “local integration.” Local integration implies that the refugee would have the ability to eventually naturalize, acquire citizenship, and continue a “normal” life in the host state.⁸⁰ However, the presently occurring marginalization stifles all possibilities for these children to locally integrate into Egyptian society. Katarzyna Grabska describes the marginalization of refugees in Egypt in three ways,

(1) Being marginalized *legally*⁸¹ in terms of access to rights and services by the host government and the singling out of refugees by organizations providing assistance; (2) being *discriminated*⁸² against by the host society; and (3) *excluding*⁸³ oneself from the host society.⁸⁴

⁷⁷ UN G.A. Res. 429 (v), 25 July 1951. “The competent Egyptian authorities had reservations because these articles consider the refugee as equal to the national.”

⁷⁸ “There are no refugee camps in Egypt. Virtually all displaced persons in the country reside in two large urban centres [sic] – Cairo and, in smaller numbers, Alexandria. The Egyptian government’s official position towards refugees is characterised [sic] by its unwillingness to permit refugees legal integration into Egyptian society. Refugee parents without legal status are unable to register their children. Complicated bureaucratic procedures, overcrowded schools and xenophobic attitudes are additional difficulties.” Amr Hamdy, ICT in Education in Egypt, Survey of ICT and Education in Africa (Volume 2): 53, p. 26, Country Reports, December 2007, UNESCO Institute of Statistics, 2008, See at: <http://www.infodev.org/en/Publication.399.html>

⁷⁹ Journal of Refugee Studies Vol. 19, No. 3, p. 290, Oxford University Press, 2006.

⁸⁰ Article 22: “The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education,” See also: Article 34: “The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and cost of such proceedings.” UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugee, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, “Welfare and Administrative Sections.”

⁸¹ Italics added for emphasis.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Katarzyna Grabska, Journal of Refugee Studies Vol. 19, No. 3, p. 290, Oxford University Press, 2006

The aforementioned forms of marginalization appear in very direct forms in Egypt.

Refugee children are restricted in their right to state-funded education, and the right to work is regulated by Egypt's domestic legislation concerning the employment of foreigners, law no. 137 of 1981, whereby refugees are required to obtain a work permit like any other foreigner. The Egyptian Constitution (Art. 53) gives the right of asylum to political refugees, although only a few high-level individuals benefited [sic] from this provision in the past, including the Shah of Iran, Jaafar Nimeiri of Sudan, and the wife of the last king of Libya (Zohry and HarrellBond 2003: 50).⁸⁵⁸⁶

Instead of receiving special treatment along with the special status of "refugee," those who flee their home country and enter Egypt are regarded as tourists or immigrant expatriates. This failure to recognize the extraordinary status of refugees also complicates the mission to provide them with adequate protection. As a result of these institutional methods of marginalization,

No refugees residing in Egypt have the right to acquire citizenship; nationality is granted on the basis of descent (*ius sanguinis*). This affects the registration of children born to refugees without legal status who are unable to approach their embassy. In this way, the possibility of full integration in Egypt for refugees is effectively ruled out.⁸⁷

The actions of the Egyptian State defy the purpose of the Refugee Convention: providing protection. While the Arab Republic of Egypt has signed the treaty, the State has failed to implement any domestic legislation, showing either indifference or inability to deal with the plight of the thousands of refugees and asylum seekers that flood the Egyptian borders.

In the absence of appropriate procedures or willingness on the part of the Egyptian government to implement them, UNHCR has assumed responsibility for refugee status determination (see Kagan 2006).⁸⁸ The government's reluctance to take responsibility for status determination and assistance to refugees might be explained in two ways: institutional and financial obstacles (according to the former head of the Refugee Affairs Department at the Ministry of Foreign Affairs,

⁸⁵ ZOHRY, A. and HARRELL-BOND, B. (2003) 'Contemporary Egyptian Migration: An Overview of Voluntary and Forced Migration', Working Thesis C3. Development Research Centre on Migration, Globalization and Poverty: University of Sussex.

⁸⁶ Grabska, *Supra* note 85.

⁸⁷ *Id.*

⁸⁸ KAGAN, M. (2006) 'Frontier Justice: Legal Aid and UNHCR Refugee Status Determination in Egypt', *Journal of Refugee Studies* 19(1): 45–68.

interview with author, 13 March 2005), and the political significance of the refugee population in Egypt.⁸⁹

Such blatant discrimination sends a signal to asylum seekers that Egypt does not intend to offer a permanent place for refugees to escape persecution. Sadly, this notion of indifference to the Refugee Convention is felt by actors other than refugees and the State. Non-governmental and International organizations perceive the same sentiment as Egypt has gained a reputation of being simply a transit state for refugees who wish to be resettled to western countries.⁹⁰

⁸⁹ Grabska, *Supra* note 85.

⁹⁰“The host government and international and local organizations providing assistance see refugees’ presence as transitory, refugees also perceive their stay as temporary. Egypt is seen by many refugees as a transit point on the way to a western country where their lives can fully flourish.” Grabska, *Supra* note 85.

III. No Play Zone

Refugee children are systematically denied basic rights and opportunities that facilitate their access to, *inter alia*, the Right to leisure while living in Egypt. As discussed in the previous chapter, Egypt has failed in fulfilling its treaty obligations in granting the Right to leisure in more than one fashion. The predominant obstacles faced specifically by refugee children in Egypt relate to: economic capacity, legal reservations and classism or xenophobia. Essentially, Egypt does not offer a legally, socially or culturally-accepting environment in which refugee children may access their Right to leisure.

A. Who is to Blame?

A fraction of the blame rests on the failure of the Egyptian government to ratify the Refugee Convention. This means that Egypt has yet to establish a domestic system for acknowledging, registering or assisting asylum-seekers. This aside, an even greater portion of the fault lies in a fundamental flaw of the human rights system itself. The international human rights system envisages a utopian ideal of equality for the global community when in reality, States are socially and culturally distinct and economically stratified. As early as the Second Hague Conference of 1907, James Scott Brown, J.U.D., stated,

In international law all states are equal....If it be said that all states are equal, it necessarily follows that the conception of great and small Powers finds no place in a correct system of international law. It is only when we leave the system of law and face brute fact that inequality appears.⁹¹

Over a century ago, practitioners of international law were acknowledging the fact that States are unequal. It was eventually “the doctrine of equality which prevented the establishment of an international court of justice in 1907.”⁹² The equality of States was a present principle and obstacle in the early formulation of the modern international legal system. *Equality* was viewed as a thorn in the side of international law, causing decades

⁹¹ S.W. Armstrong, *Doctrine of the Equality of Nations in International Law*, The American Journal of International Law, Vol. 14, No. 4 (Oct., 1920), p. 540. See at: <http://www.jstor.org/stable/2187873?seq=2>

⁹² *Id.*

of set-backs, specifically, to the establishment of the International Court. On top of being a nuisance to legal progress, *equality* was also viewed as something that can only be achieved if the facts of the condition of States were ignored. In order to elevate Egypt to a level of international equilibrium, one would need to ignore the social and cultural distinctions that manifest as xenophobia, as well as the economic stratification that appears as highly structured classism within the country.

The major push for the inclusion of the principle of *equality* came from Western countries.⁹³ Since these were the same states that bared the guilt of most atrocities, one can assume that this was another effort at building the guise of “international good-doers.” Foolishly, the international community allows such negligent principle to remain problematic for so many modern States, who struggle to implement such troublesome principles. The 1933 Montevideo Convention on Rights and Duties of States imprudently states that, “the rights of each [State do] not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.”⁹⁴ Such disregard for the capacity of a State to perform its obligations gives testament to the irrationality behind the principle of *equality* to begin with. Irreverence of this sort allows large States to practice aggressive politics, and leaves smaller States vulnerable to the larger States’ humanitarian mercy (i.e., intervention, etc.).⁹⁵ Surprisingly, such problematic aspects have been allowed to linger, as in the Charter of the United Nations, which states: “The Organization is based on the principle of the sovereign equality of all its Members.” The resilience of such an oxymoronic principle lies in the power that it gives to larger States to control the outcomes. Smaller States will not likely protest until their interests are severely usurped.

This optimistic yet delusional human rights approach, especially with regard to Refugee Law, proves problematic when applied to countries such as Egypt, that struggle to

⁹³ Ann van Wynen Thomas and A. J. Thomas, Jr., *Equality of States in International Law. Fact or Fiction?*, Virginia Law Review, Vol. 37, No. 6, Oct., 1951, p. 791-2, *See at:* <http://www.jstor.org/stable/pdfplus/1069322.pdf?acceptTC=true>

⁹⁴ Montevideo Convention on Rights and Duties of States 1933, Art. 4, International Convention of American States in regards to Economic, Social and Cultural Rights, 1933-1940, p. 121.

⁹⁵ Wynen Thomas and Thomas, Jr, *Supra* note 94.

provide for even its own citizens. What develops is an amalgamation of lower-class citizens and refugees, who are only equal primarily in their fight to access rights promised by these international conventions. The resulting burden of international obligations on the Egyptian State is exacerbated by the increasing desperation of refugee children, who continually expect the unconditional protection of Egypt and the international community. Instead, refugee children face various, State-engineered obstacles in accessing the Right to leisure in Egypt.

B. First World System, Third World State

Since the State is the principle subject of international law,⁹⁶ State sovereignty provides Egypt a substantial buffer of legislative discretion in engineering domestic laws.⁹⁷ These laws prove to be culturally-biased, religiously-based, or socially-divisive. Nonetheless, it is paramount to investigate the dominant justification for Egypt's massive human rights failures towards such a vulnerable group as refugee children.

The economic capacity of any State dictates its ability to support the population within its territory. However, it is clear that IHRL does not factor varying levels of economic capacity when pressuring States into acceding to treaties. Consequently the demand that these international conventions place on a country like Egypt seems almost ludicrous. It is obvious that the demands of international law are incompatible with the economic and social dilemma that a country such as Egypt is currently facing. Perhaps the diabolical, Arab Republic of Egypt signed the UDHR, CRC and Refugee Convention with absolutely no intention of fulfilling the treaty obligations. Alternatively, Egypt could have simply acquiesced to international trend and pressure⁹⁸ set and applied by Northern States who drafted the documents in question.

⁹⁶ B.S. Chimni, "Third World Approaches to International Law: A Manifesto," *International Community Law Review* 8 (2006): 3, p.7.

⁹⁷ "Therefore all order consists in the subordination of Plurality to Unity...Unity is the root of all social existence... And the State [is] the expression of that unity." Harold J Laski, *Studies in the Problem of Sovereignty*, "The Sovereignty of the State, 1917, p.5.

⁹⁸ B.S. Chimni states that "international law is coming to define the meaning of a "democratic State" and relocating sovereign economic powers in international institutions, greatly limiting the possibilities of third world States to pursue independent self-reliant development." Accordingly, third world countries like Egypt use the signing of international treaties as a way to not be left behind by the "economic powers. *See in:* B.S. Chimni, *Supra* note 97, p.7.

Another possibility is that the aforementioned conventions are simply incompatible with the Egyptian State to begin with. In order to create and sustain systems that are deemed “universal,” they must be “assessed in terms of how it deals with the most disadvantaged.”⁹⁹ This means that refugee children, who may be victims of torture and trafficking, must be the priority subject of Refugee Law in all situations, and in all States. As to be described in the following section, the Egyptian State does not possess the capacity to deal with the highly disadvantaged refugee population. The “universal” policies are not realistically compatible with the economic status of the Egyptian State. Thus, as a result, the refugee child’s rights are commonly forfeited in Egypt.

Northern or First World States have a higher capacity to realize such equality. Additionally, and unfortunately, those Northern States quite possibly possess a less adequate perspective from which to assess the needs of Southern States, which results in the production of flawed legislation. IHRL was created *for* First World States, not for Southern or Second and Third World States. In fact,

TWAIL scholars seek to transform international law from being a language of oppression to a language of emancipation—a body of rules and practices that reflect and embody the struggles and aspirations of Third World peoples and which, thereby, promotes truly global justice.¹⁰⁰

In his “Third World Approach to International Law (TWAIL) Manifesto,” B.S. Chimni identifies the risk that third world States face at the expense of international law with the following: “the economic and political independence of the third world is being undermined by policies and laws dictated by the first world and the international institutions it controls.”¹⁰¹ International Law embodies the power struggle between First and Third World States. Institutions such as the UN Security Council allow a few powerful States to block the initiatives of many smaller states. Additionally, the more

⁹⁹ Anghie and Chimni, *Individual Criminal Responsibility in Internal Conflicts*, Chinese Journal of International Law, 2003, p. 102.

¹⁰⁰ B.S. Chimni, *Supra* note 97, p. 79.

¹⁰¹ B.S. Chimni, *Supra* note 97, p.3.

powerful States possess exclusive techniques for extracting consent from weaker States. Such techniques include, *inter alia*, forcing State actions by applying sanctions.¹⁰²

The power struggle is unequal, always ending with the First World on top. Anghie and Chimni note that “ambiguities and uncertainties are invariably resolved by resort to broader legal principles, policy goals or social contexts, all of which are often shaped by a colonial view of the world.”¹⁰³ This means that the standards for child refugees in Egypt are very well dictated by the standards of the ex-colonial powers. The lingering effects of colonialism still play a large role in the global allocation of power and wealth. A monopoly of decision-making exists within the hands of a small few in the First World. Such a monopoly has “prevented an effective third world coalition from emerging as a counterweight to the unity of the first world.”¹⁰⁴ One First World Coalition, also known as the Security Council, has created a legally-based united coalition, which allows them to produce resolutions which serve in their interests. All the while, Third World States do not have the dominant hand in adding their opinions or needs in the aforementioned decisions.

In his Manifesto, Chimni asserts the existence of IHRL as a wedge placed between Northern and Southern States in order to preserve the status quo. Additionally, he argues that the TWAIL doctrine is especially necessary in liberating the Third World States from “economic structures which continue to disadvantage Third World States.”¹⁰⁵ He states, “The welfare of the peoples of the third world does not have priority in this scheme of things,” revealing the goal of IHRL is not to bring Southern States up to equilibrium with Northern States. In reality, Chimni states in his “TWAIL and Individual Responsibility,” article that the experience of colonialism is central to the formation of international law.¹⁰⁶ Colonialism, acted as the wedge referred to above, and also as the catalyst from

¹⁰² Siegfried Wissener and Andrew R. Willard, *Policy-oriented Jurisprudence and Human Rights Abuses in Internal Conflict: Toward a World Public Order of Human Dignity*, 93AM, J. Int'l L. 316, 1999. Found in: Anghie and Chimni, *Individual Criminal Responsibility in Internal Conflicts*, Chinese Journal of International Law, 2003, p. 94.

¹⁰³ Anghie and Chimni, *Supra* note 100, p. 101.

¹⁰⁴ B.S. Chimni, *Supra* note 97, p.6.

¹⁰⁵ Anghie and Chimni, *Supra* note 100, p. 82.

¹⁰⁶ *Supra* note 106, p. 84.

which many principles and systems of International Law were born. Naturally, such conclusions bring into question the motives of the IHRL system. Since colonialism had a catalytic effect on International Law, is a colonial system necessary to preserve International Law, as well? TWAIL legal experts claim that,

International law has always served the interests of dominant social forces and States in international relations... A growing assemblage of international laws, institutions and practices coalesce to erode the independence of third world countries in favor of transnational capital and powerful States.¹⁰⁷

Many Second and Third World countries are unable to provide an adequate standard of living to their own citizens, yet are expected to support an influx of asylum seekers. Even more so, the consequences of denying Convention rights to asylum seekers means that the host country may incur international sanctions, become labeled as, 'a human rights violator,' and receive slurs in the bad press of various international human rights oversight organizations.

Evidence of the unbalanced power of 1st world States over weaker, troubled States can be seen in the creation of the International Criminal Tribunal for Yugoslavia (ICTY). Though the conflict was limited to the Balkan States, the UN Security Council usurped the power to create the prosecutor body, the Tribunal. This event can be contrasted to the South African resolution post-Apartheid. South Africa maintained sovereign power by establishing Reconciliation Committees to deal with its internal conflict. Such should be the international practice, yet International Law habitually allows stronger States to encroach upon the sovereign power of weaker States or States in chaos. Such encroachment exhibits the biased ways of the International Legal Institutions.¹⁰⁸

International law is as much selective as it is unbalanced. Chimni identifies the blatant selectivity of International Law in the ICTY. First, there was obvious dismissal of evidence presented to the International Criminal Tribunal for Yugoslavia in the 1990's.

¹⁰⁷ B.S. Chimni, *Supra* note 97, p.26.

¹⁰⁸ *Secretary-general's Report on Aspects of Establishing an International Tribunal for Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia*, UNSC Res. 808, UN Doc. S/25704, 1993'; *Found in: Anghie and Chimni, Individual Criminal Responsibility in Internal Conflicts, Chinese Journal of International Law, 2003, p. 94.*

The ICTY's mandate was clearly to persecute those who were responsible for the mass killing of civilians. Instead, Chimni states that there was "compelling evidence to the effect that NATO had violated international humanitarian law [yet the Tribunal] chose not to proceed with any further inquiries."¹⁰⁹ Secondly, there is the practice of placing embargos and sanctions on States responsible for human rights violations. Unfortunately, countries like Iraq, there ends up being more damage done to the civilian population than the regime or State. Chimni observes, "[the] tragic paradox to that the people of Iraq have suffered more in a time of supposed 'peace' than they ever suffered in a time of war."¹¹⁰

The reality remains that the system of Human Rights Law was not necessarily designed to equalize the living standards of the global community. Henceforth, the system may seem generally useless at ensuring rights of people as opposed to the State.¹¹¹ In fact, early TWAIL scholars criticized IHRL for legitimizing the oppression of Third World peoples.¹¹² The system of Human Rights promises an utopian ideal to Third World peoples, yet allows sovereign, contracting States like Egypt to continue its atrocious practices and violations against its own people and refugee children alike. The Human Rights Regime righteously parades around in many laudable shapes and forms, as almost to assume that Southern countries are too daft to interpret the neo-colonial "development"¹¹³ projects and treacherously high World Bank and IMF interest rates.¹¹⁴

¹⁰⁹ *Supra* note 109, p. 91.

¹¹⁰ W. Michael Resman & Douglas L. Stevick, *The Applicability of International Law Standards to United Nations Economic Sanction Programs*, 9(1) EUR. J. Intls' L. 86, 1998. *Found in*: Anghie and Chimni, *Individual Criminal Responsibility in Internal Conflicts*, Chinese Journal of International Law, 2003, p. 92.

¹¹¹ Koskeniemi, *Carl Schmitt, Hans Morgenthau, and the Image of Law in International Relations*, in, Michael Byers ed., *The Role of Law in International Politics: Essays in International Relations and International Law*, *Found in*: Anghie and Chimni, *Individual Criminal Responsibility in Internal Conflicts*, Chinese Journal of International Law, 2003, p. 101.

¹¹² Anghie and Chimni, *Supra* note 100, p. 80.

¹¹³ "In recent years it has been argued that "development" itself is the [T]rojan horse and that the ideology it embodies is responsible for third world peoples and States being willingly drawn into the imperial embrace.⁷⁸ It is suggested that the post-colonial imaginary has been colonised allowing the major organising principle of Western culture, that is 'the idea of infinite development as possibility, value and cultural goal' to be implanted in the poor world.⁷⁹ If only the third world countries were to choose non-development (of whatever local variety), its people would be spared much of the misery that they have suffered in the post-colonial era. The general idea here is to displace the aspirations of third world peoples and scale down development to more tolerable levels. This would help avoid the burden of sustainable development from falling on the North and help sustain its high consumption patterns." *See in*: B.S. Chimni, *Supra* note 97, p. 18.

In reality, the IHRL system is an unbalanced paradigm which is impossible for Southern states to implement. This boils down to the conclusion that alternate avenues must be explored through which refugee children can access the Right to leisure without an infrastructure offered by the Egyptian government. Such alternatives will be further discussed in Chapter Three.

C. Egypt's Economic Incapacity

Egypt does not possess the economic capacity to ensure its own citizens' Right to leisure, let alone the right of refugee children. At the same time, refugee children do not possess the economic capacity to access the largely privatized leisure spaces within Egypt. This challenging situation can be understood by taking a close look at the economic condition of life inside of Egypt. Some of the first things that one notices when visiting the capital of Cairo are the crowds, traffic and pollution. Cairo is a congested city, hosting nearly 25% of the country's total population of roughly eighty-four million¹¹⁵ people with a massive growth rate of 10% annually in the Cairo governate alone.¹¹⁶ The streets and neighborhoods are crowded with cheaply-constructed dwellings piled one on top of the other. There is no city-sponsored trash collection, so garbage becomes stored on street corners and any clear area of land. Many such areas are prime estate for that remains between buildings and homes and have high potential to host leisure activities.

Unemployment plagues the bulging youth population¹¹⁷ with the number of employed and unemployed (working-aged) citizens being almost equal to one another; the work force is approximately twenty-two million, while the number of unemployed persons follows closely behind at twenty million.¹¹⁸ The remaining 58% of the population includes those who have yet to reach the work age, plus the informal business sector (i.e.

¹¹⁴ IMF, "IMF Outlines \$3 Billion support Plan for Egypt, IMF Survey Magazine, 5 Jun 2011. *See at:* <http://www.imf.org/external/pubs/ft/survey/so/2011/NEW060511A.htm>

¹¹⁵ CIA, "The World Factbook: Africa: Egypt: People and Society," "83,688,164 (July 2012 est.)," *See at:* <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

¹¹⁶ Egypt State Information Services, Central Agency for Mobilization and Services, Census, 2006, "Land and People; Population" *See at:* http://www.sis.gov.eg/En/LastPage.aspx?Category_ID=19

¹¹⁷ CIA, "The World Factbook: Africa: Egypt: Age Structure," "50.7% of the population is under the age of 24 years of age," *See at:* <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

¹¹⁸ Egypt State Information Services, Central Agency for Mobilization and Services, Census, 2006, "Land and People; Population" *See at:* http://www.sis.gov.eg/En/LastPage.aspx?Category_ID=19

street vendors, etc.).¹¹⁹ Essentially, 78% of the population relies on government subsidies,¹²⁰ and the aid of foreign organizations and religious donations for survival. In numerical terms, the government in effect supports approximately 63,000,000 of its citizens. When compared to this enormous figure, the half-million refugees seeking protection in Egypt would hardly make a presence on the Egyptian Government's radar of concern. Unfortunately, the reality of the matter remains that the Egyptian government does not have the economic means to provide human rights and security to its own population. The U.S. State Department reports that,

Some of Egypt's estimated 200,000 to one million street children – both boys and girls – are subjected to sex trafficking and forced begging...Egyptian children are recruited for domestic service and agricultural labor; some of these children face conditions indicative of forced labor, such as restrictions on movement, nonpayment of wages, threats, and physical or sexual abuse. In addition, wealthy men from the Gulf... reportedly continue to travel to Egypt to purchase "temporary" or "summer marriages" with Egyptian females, including girls who are under the age of 18...Children involved in these temporary marriages suffer both sexual servitude and forced labor as servants to their "husbands." Child sex tourism occurs in Egypt, particularly in Cairo, Alexandria, and Luxor. Egypt is a destination country for women and girls forced into prostitution...¹²¹

Many of Egypt's own children are living in a dire state, resorting to prostitution and vagabond life-styles for survival. The U.S. State Department's account of Egypt's street children closely resembles the plight of unaccompanied children struggling to find safety and refuge. Where many Egyptian children are themselves incapable of accessing an adequate standard of human rights, it seems ludicrous to expect the Egyptian government to additionally provide for refugee children, let alone the Right to leisure. Both groups of children, refugees and Egyptian street-children, are subjected to gross physical, sexual, and psychological abuse. When viewing testimonies of both groups, the lowly conditions

¹¹⁹ *Id.*

¹²⁰ Some basic consumer commodities, especially food and energy, and services, such as education, were subsidized to make them available for the bulk of the population. In industry, public enterprises paid subsidized rates for energy but had to sell their products to consumers at fixed, low prices. Price distortions and subsidies were magnified over time, resulting in the misallocation of resources and straining the government budget. For example, in 1987 the ratio of consumer price per kilowatt-hour of electricity to production and distribution costs was less than 0.25. *See at:* U.S. Library of Congress, Country Studies: Egypt, On the Web, "Pricing and Subsidy, 1990.

¹²¹U.S. Department of State website, Office to Monitor and Combat Trafficking in Persons, "Trafficking in Persons Report: Country Narratives," 2012, <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>

of subsistence appear indistinguishable.¹²² It seems highly implausible that Egypt would be able or should even be expected to provide protection for foreign persons when the State continues to display a record of human rights failures when dealing with its own population.

The Government of Egypt does not fully comply with the minimum standards for the elimination of trafficking....Due to prolonged political unrest, the Government of Egypt was unable to provide law enforcement and prosecution data on its efforts to combat trafficking during the reporting period [2012]. The government did not proactively identify victims of trafficking among vulnerable groups, and the government's capacity to do so remained limited. The government also did not report any significant efforts to address forced child labor in domestic... Moreover, Egypt failed to investigate and prosecute government officials, who were complicit in [human rights] offenses, particularly the forced labor of domestic workers in their private residences. The government's security forces continued a practice of shooting foreign migrants in the Sinai, including possible trafficking victims.¹²³

The U.S. Department of State report reveals a steady record of irreverence of the Egyptian Government to abiding by human rights standards even when dealing with its own Egyptian citizens. Notably, since the January 25th 2011 Revolution, security forces have increasingly acted with impunity against their own citizens, including child detainees. Human Rights Watch exposes the brutal nature by which the State-sponsored mechanisms deal with Egypt's *own* needy child population.

Egyptian police and military officers have arrested and detained over 300 children during protests in Cairo over the past year, in some cases beating or torturing them, Human Rights Watch said today. Frequently, these children were illegally jailed with adult prisoners, tried in adult courts, and denied their rights to counsel and notification of their families...that police and military officers kicked them,

¹²² Brooke Come, "Refuge for Refugees," Daily News Egypt, 7 Nov 2012, "[Refugees] come from situations where there is no safety or security and many have been tortured, beaten, raped, or seen family members killed. 'People come to Cairo suffering from depression or post-traumatic stress.'" See at: <http://www.dailynewsegypt.com/2012/11/07/refuge-for-refugees/> See also: Tahani Rached, "These Girls," documentary film, The Woyingi Blog, Review of "These Girls:" "Violence is a daily reality of their lives on the streets. The girls face violence from each other, their parents, the police, and particularly [sic] men who want to rape them. The girls live with the constant threat of being kidnapped [sic] and gang raped and share stories of girls being taken and held captive for days by men who have dragged them off the street." See at: <http://woyingi.wordpress.com/2013/01/14/documentary-review-these-girls-by-tahani-rached-egypt/>

¹²³ U.S. Department of State website, Office to Monitor and Combat Trafficking in Persons, "Trafficking in Persons Report: Country Narratives," 2012, <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>

beat them with rifle butts, hit them with batons, and subjected them to electric shocks.¹²⁴

The aforementioned actions not only violate international laws, but also Egyptian civil codes which state,

Egypt's Child Law (Law No.12 of 1996 as amended by Law No.126 of 2008) requires issues concerning children who are accused of a crime to be handled exclusively by the Child Court, and sets criminal penalties for police or public officers who detain children with adult prisoners.¹²⁵

Such a vile record of treatment does not paint a hopeful future for refugee children, who arrive to Egypt, betting all of their hopes and livelihoods on the protection of the Egyptian State.

The 2011 Revolution did not improve the odds for better protection for either refugee children or Egyptian citizens. Energy and fuel sources have been nearly depleted causing long lines at pumping stations and an increase in the price of food and other bare necessities.¹²⁶ Price increases have stressed the country, where already more than 20%¹²⁷ live below the poverty line and public debt is 85% of the GDP.¹²⁸ As of yet, the January 25th 2011 Revolution has caused, *inter alia*, higher food prices, weakened security, increased power-outages and fuel shortages. The CIA World Factbook notes that,

Living conditions for the average Egyptian remained poor... After unrest erupted in January 2011, the Egyptian Government backtracked on economic reforms, drastically increasing social spending to address public dissatisfaction, but political uncertainty at the same time caused economic growth to slow significantly, reducing the government's revenues. Tourism, manufacturing, and construction were among the hardest hit sectors of the Egyptian economy, and economic growth is likely to remain slow during the next several years. The government drew down foreign exchange reserves by more than 50% in 2011 and 2012 to support the Egyptian pound...unsuccessful negotiations with the

¹²⁴ Human Rights Watch, "Egypt, A Year of Abuses Against Detained Children," 20 Nov. 2012, *See at:* <http://www.hrw.org/news/2012/11/19/egypt-year-abuses-against-detained-children>

¹²⁵ *Id.*

¹²⁶ U.S. Department of State website, Office to Monitor and Combat Trafficking in Persons, "Trafficking in Persons Report: Country Narratives," 2012, <http://www.state.gov/j/tip/rls/tiprpt/2012/192366.htm>

¹²⁷ CIA, "The World Factbook: Africa: Egypt: Economy," 2005 estimate," *See at:* <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>

¹²⁸ *Id.*

International Monetary Fund ... could precipitate fiscal and balance payments crises in 2013.¹²⁹

Basically, the Egyptian State is in crisis, and an enormous number of “poor” Egyptians are paying the price with their lives. In addition to the gross inability of Egypt to support its own population and subsequently the refugee population, Egypt’s behavioral predisposition seems entirely ignorant to the existence of an international human rights system.

For decades, Egyptians activists and civil society leaders had protested the widespread use of torture and other ill-treatment; grossly unfair trials of civilians before military and emergency courts; restrictions on the peaceful exercise of the rights to freedom of expression, association and assembly. Other issues included legal and other discrimination against members of religious and ethnic minorities; arrests and prosecutions of people for their actual or alleged sexual orientation; and the maltreatment of refugees, asylum-seekers and migrants, including through the use of excessive, including lethal force.¹³⁰

Regardless of international shaming and pressure, Egypt maintains the inability and/or unwillingness to accede to the rules of international of law. Consequently, the likelihood that the Egyptian government will begin to provide adequately for its own citizens or refugee children remains low for the near future.

D. Legal Obstacles

According to its human rights record, the Egyptian government solidifies its atrocious behavior by obstructing certain refugee rights on legal grounds, as well. Egypt has legally impeded refugees’ ability to equally access the Right to leisure through reservations to certain articles regarding elementary education, public relief, and the right to work, social security and personal status in the 1951 Refugee Convention.¹³¹ Such reservations refuse refugees the right to work, making them dependent on informal labor, which heightens their risk of child exploitation. Exploited children cannot engage in play

¹²⁹ *Id.*

¹³⁰ Amnesty International, “Egypt Human Rights,” *See at:* <http://www.amnestyusa.org/our-work/countries/middle-east-and-north-africa/egypt>

¹³¹ Refugee Convention, Egypt’s Reservations and Declarations, Concerning articles 20, 22, 23 and 24, *Supra* note, 1.

or access a right which on the contrary, requires them to be free from exploitation. Egypt also made reservations to Article 20 of the Refugee Convention, which prohibit refugee children from receiving some government-subsidized food, which remains available only to citizens. The Immigration and Refugee Board of Canada reports that,

The children of refugees recognized by UNHCR do not have access to free public education in view of Egypt's reservation to Article 22(1) of the 1951 Convention. During 1999, UNHCR was able to assist just over 1,100 refugee children to go to school, but again, education programs are limited by scarce funds. Similarly, in view of Egypt's reservation under Article 23 of the 1951 Convention, related to public relief, refugees do not have access to government-supplied medical care.¹³²

The catastrophic damage that these reservations have on Refugee rights in Egypt has been illuminated in the light of the political and economic strain developing since the January 25th Revolution of 2011. The general safety and socio-economic decline has proven worse for refugees, whose status in Egypt does not even rely on the Egyptian State, but on the functioning of International Organizations such as the United Nations High Commissioner for Refugees (UNHCR). Unfortunately, the mandate of the UNHCR is subject to the renewed beneficence of the Egyptian authorities.

Because Egypt entered key reservations to the 1951 Refugee Convention on personal status, public relief, education, and employment, the state was able to turn a blind eye to the most basic needs of refugees. In practical terms, these reservations prohibit refugees from access to public health care, food rationing, employment, and education. And while there are no camps or settlements in Egypt, the corollary has been that refugees are at once relegated to and hidden by the shadows of Cairo's sha'bi (popular) districts, where they are self-settled and almost entirely self-reliant. Living in poverty and without any recourse to the law, refugees eke out a hand-to-mouth existence. In these circumstances, daily life has become dangerous for the most vulnerable refugees. That some have died—and others will die—due to a lack of adequate healthcare, has been a fact of refugee life in Egypt.¹³³

¹³² Immigration and Refugee Board of Canada, *Egypt: Follow up to EGY34538.E of 9 June 2000 regarding the protection and assistance offered to Sudanese refugees by the United Nations High Commissioner for Refugees (UNHCR)*, 8 September 2000, EGY35551.E, <http://www.unhcr.org/refworld/docid/3df4be2c34.html>. [accessed on 14 April 2013].

¹³³ Robert Lawrence McKenzie (University of London), *In the Shadows of Cairo's Revolution: Reflections on Refugees and Their Human Rights*, <http://www.anthropology-news.org/index.php/2012/02/10/february-mes-news> [accessed on 14 April 2013].

Essentially, refugee children are excluded from basic means of subsistence and integration. They are forever fated to pull themselves up from the deepest depths of survival in an unfamiliar and unkind environment. The government sees them as a burden, Egyptian citizens see them as a menace, and the refugees themselves may see each other as competition. Frustrated, unprotected and unwanted in Egypt, many children “seek alternative destinations with little regard as to whether these may be reached safely or legally. Some die in their attempts to enter Israel or make it across the Mediterranean.”¹³⁴ These reservations intentionally or unintentionally fuel xenophobia against refugee children, and reinforce classicism which restricts the ease with which refugee children can share leisure spaces in Egypt.

¹³⁴ *Id.*

IV. Making A Way for Play

A. Leisure in Egypt

Despite the economic strain that many Egyptians live under, leisure is an important part of Egyptian culture. In fact, leisure may be one of the most common stress-relievers and time-fillers adopted by the country suffering from such high unemployment rates. A coffee shop or tea cart can be found on almost every street, bridge and sidewalk in Cairo, providing an easily-accessible respite from the city's busy pace. As such, Cairo could easily be nick-named "The City of a Thousand Cafés"¹³⁵ due to the prevalence of the establishments on every street. Egyptians love to spend their free time sitting in *ahwas* (café), playing *tawla* (backgammon) or smoking *sheesha* (water pipe). Additionally, parks and recreation clubs can be found in almost every neighborhood. However, most recreation facilities require some fee for entrance, field rental, or membership dues.

There are more than 2,000 *nawadi* (sporting clubs) and *maraakiz a-shabaab* (youth sporting centers) throughout the Cairo and Giza governates alone.¹³⁶ The *nawadi*, privately owned, and *maraakiz*, government-operated, usually contain playing fields and an area for socializing. The main difference between the *nawadi* and the *maraakiz a-shabaab* is the social prestige that is associated with former and not the latter. The *nawadi* usually require an annual membership that may range anywhere between a few hundred Egyptian Pounds (L.E.) and 500,000L.E. The most notorious Egyptian *naadi*, the Gezira Club on the island of Zamalek,¹³⁷ boasts a lifetime membership fee for

¹³⁵ This references the fact that Cairo has been nick-named "The city of a Thousand Minarets" due to the high number of mosques found in the city. See in: Emmy Varly, "City of a thousand minarets' disgruntled at Swiss vote" "City of a thousand minarets' disgruntled at Swiss vote," 3 Dec. 2009, <http://www.telegraph.co.uk/expat/expatnews/6717305/City-of-a-thousand-minarets-disgruntled-at-Swiss-vote.html>

¹³⁶ AUC Sports Manager, conversation: 19 March 2013, AUC Campus.

¹³⁷ "The Gezira Club on the island of Zamalek, which is the "the oldest, most famous and most exclusive private club in the Middle East has been the leisure-time home for the rich, the powerful, the beautiful [since 1882]." Bob Hepburn, "Snobbery's a way of life at the British club in Egypt," *The Toronto Star*, 9 Dec. 1991.

500,000L.E. plus an annual renewal fee of 2,000L.E for an individual or 10,000L.E. for a family.¹³⁸

The *maraakiz a-shabaab* do not usually require a membership fee, yet still may charge entrance or rental fees for field usage, as well. The numerous *maraakiz* also vary drastically in terms of fee and field quality. The *markaz a-shabaab* in the affluent neighborhood of Maadi charges 5L.E. (15L.E. for foreigners) entrance fee, plus 150L.E. per-hour rental fee for the use of one of the astro-turf fields. In addition, the field can only be rented with the help of a member of the club. At the other end of the spectrum, the *markaz a-shabaab* in the less affluent neighborhood of Ard El Lewa only charges a small 25L.E. per-hour fee for the use of one of its dirt or cement fields.¹³⁹

Many green spaces and parks are privatized as well. The entrance fees are not nearly as exorbitant as some of the sporting clubs, yet the nominal amount still remains enough to deter the regular usage by the economically frugal refugee children. For example, the grandiose Al Azhar Park charges visitors 7L.E. to stroll the park grounds, which include numerous fountains, restaurants, a children's play area and an amphitheater for musical concerts. Another privatized park, adjacent to the Cairo Opera House on the island of Zamalek, charges a 2L.E. entrance fee simply to enjoy the sparse shade and privacy offered by palm trees. This park does not contain food venues or even benches, and has barely enough open space to play a small game of football.

The vast privatization and regulation of these recreation spaces greatly adds to the inaccessibility of the Right to leisure for refugee children in Cairo, Egypt. Refugee children are further marginalized as they are unable to pay even the small fees to utilize the government-owned *maraakiz* or parks. The monopoly that the government and private entities have over the recreation spaces in Cairo has resulted in a semi-embargo against refugee children's access to the Right to leisure in Egypt. Such a failure to enable

¹³⁸Gezira Club, Membership and Finances Office, Phone call, 12 May 2013, +20 227-35-60-00.

¹³⁹ Personal experience in both clubs has revealed the prices of entry, rental, as well as the quality of playing fields.

the accessibility of international human rights denies refugee children crucial therapeutic opportunities provided by leisure activities.

B. Leisure for Refugee Children

As mentioned at the beginning of this thesis, “Sport has been increasingly recognized and used as a low-cost and high-impact tool in humanitarian, development and peace-building efforts.”¹⁴⁰ In addition to its humanitarian qualities, sport also functions highly in social, physical and physiological ways.¹⁴¹ The combination of such components makes sport a strong method of therapy for rehabilitating and integrating refugee children. Similar impacts of sports for refugee children was documented in a survey titled, “Sports in the Life of a Refugee Child.”¹⁴²

The questionnaire was completed by a female refugee from Bosnia and Herzegovina, who will be called, “Maja” for the purposes of confidentiality. Maja’s family was granted refugee protection by the United States after fleeing war in her home country. Maja describes her experience arriving to the United States at the age of eight years old,

I was already a shy child, and not being able to effectively communicate made things even more difficult. I thought everything would be like on *Beverly Hills, 90210* – a TV series that I was obsessed with as a kid in Bosnia. I was excited, but this feeling withered slowly. I realized that we were poor, that we were on welfare and that we would be living in a tiny apartment in San Francisco. I remember feeling depressed.

Although Maja started school immediately and entered at an advanced level, her language barrier prevented her from joining in many school activities and made it difficult for her to make new friends. Fittingly, Maja met and grew close to another immigrant from China, who encouraged her to try out for the school’s running club. Maja’s self-image changed significantly from the first day that she joined the team:

I was one of the fastest kids on the team. Playing this sport was the only time when I felt good—when I felt free and happy. I finally got attention and stopped feeling like a ghost—like a ‘nobody.’ I felt proud of myself, of my body, of my

¹⁴⁰ *Supra*, note 4.

¹⁴¹ *Supra*, note 3.

¹⁴² Carrie Leanna Johnson, “Sports in the Life of Refugee Children,” Thesis Questionnaire, The American University in Cairo, 2013.

legs, of my desire to run fast! In general, running track gave me the opportunity to feel strong again. I remember feeling sorry for my family and myself. Running was spiritual. I did not know it at the time, but in retrospect, I see that running helped me to build a healthier relationship with myself.

Maja also expressed that participation on the team also helped her to improve her English skills, as well as provide a comfortable environment where she could make new friends. Most importantly, Maja's involvement in sports "gave [her] another life after the war." Due to her success as a runner, she went on to compete in the top division of university athletics, and earned a scholarship to study at the prestigious University of California, Berkeley. Maja testifies that without sports, she would not be as physically and emotionally healthy as she is today. Maja emphasized that "through sports, through our body, we can learn so much about ourselves and express and expel traumas that would otherwise stay dormant."

Maja's story represents the power that the Right to leisure has in transforming a shy, traumatized refugee into a powerful, successful member of her host-country's community. The Right to leisure for refugee children has an impact that can be achieved apart from government participation.

C. Non-State Response

Though Egypt has made reservations invoking discretion towards refugee privileges, and despite Egypt's current economic and social situation, the State cannot use its sovereign discretion to default on its obligations to refugee children per the aforementioned international conventions.¹⁴³ Instead, Egypt should use its discretionary power to act in good faith and endow refugees with preferential treatment as an extraordinarily

¹⁴³ "Lack of resources cannot bluntly justify the non respect of rights recognized in the CRC, including Article 31, as long as the demonstration has not been made that resources to this end have been stretched to their maximum potential. States are in any circumstances required to take measures to implement economic, social and cultural rights." See in: M. Santos Pais, 'The Convention on the rights of the Child', in: Office of the UN High Commissioner for Human Rights, UN Institute for Training and Research and UN Staff College (eds.), *Manual on Human Rights Reporting under Six Major International Human Rights Instruments* (Geneva, Office of the UN High Commissioner for Human Rights, UN Institute for Training and Research and UN Staff College, 1997), p. 409. See in: Paulo David, *Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to leisure, Play and Culture*, Leiden, NLD: Brill Academic Publishers, 2006. p 11., <http://site.ebrary.com/lib/aucairo/Doc?id=10234683&ppg=23> [accessed: 15 April 2013]

vulnerable population in dire need of privileged human rights. The Committee on Economic, Social and Cultural Rights maintains a similar argument against States that fail in their Convention obligations. The Committee has stated that it is necessary to be flexible and reflect “the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights.”¹⁴⁴ This means, that Egypt could very well fulfill its duties towards refugee children by delegating the state responsibility to other parties, and ensuring that the third parties are not impeded in their efforts to realize certain rights. In respect of Article 31 of the CRC, the Committee reiterates that,

The *raison d’être* of the Covenant, which is to establish clear obligations for States parties in respect of the full realization of the right in question. It thus imposes an obligation to move expeditiously in effectively as possible towards that goal.¹⁴⁵

The specific goal in this case is access to the Right to leisure for refugee children in Egypt. Obligations remain, regardless of the difficulty faced in complying with the rights set out in the convention. For example, the Committee for the Convention on the Rights of the Child, explicitly guards against States defaulting on the provisions of the agreement. The Committee states that,

State Parties need to ensure that the four general principles of the [CRC] are systematically respected: the right to non-discrimination (Article 2), the principle of the best interests of the child (Article 3), the right to life, survival and development (Article 6) and the right of the child to express his or her views freely ‘in all matters affecting the child’ (Article 12).

The principles are embodied in the CRC’s Right to leisure, as leisure activities contain the capacity to embody all four principles: integration versus discrimination, positive child development in the child’s interest, health and survival as well as free physical expression for development. The CRC Committee’s statement follows tightly to the treaty laws set out in the 1969 Vienna Convention on the Law of Treaties, which codified the obligations of parties to international State agreements. The binding power of the

¹⁴⁴ Paulo David, *Commentary on the United Nations Convention on the Rights of the Child, Article 31: The Right to leisure, Play and Culture*, Leiden, NLD: Brill Academic Publishers, 2006. p 12., <http://site.ebrary.com/lib/aucairo/Doc?id=10234683&ppg=23> [accessed: 15 April 2013]

¹⁴⁵ *Id.*

CRC, and subsequent treaties, initiates at the moment of signing the treaty. Article 12 of the Vienna Convention, states that, “the consent of a State to be bound by a treaty is expressed by the signature of its representative.”¹⁴⁶ Thus, the Egyptian State became legally bound to uphold the values of the CRC the moment that it was signed by the present representative. Egypt’s signature means that the Egyptian State has “expressed its consent to be bound by the treaty.”¹⁴⁷ Subsequently, being bound by the treaty also means upholding the aforementioned four CRC principles, including ensuring the Right to leisure for Refugee children within its territory.

Most importantly, the Vienna Convention prohibits States from submitting any reservation that is “incompatible with the purpose and object of the treaty.”¹⁴⁸ Egypt’s reservation to the Refugee Convention undermines the possibility of local integration, and instead segregates the refugee communities in the country. Forbidding refugees from any benefits equal to citizens effectively ostracizes a vulnerable population that international treaty has mandated Egypt to protect. Just as with the CRC, Egypt’s signature on the Refugee Convention denotes Egypt’s consent to be bound. The UNHCR reiterates the importance of *local integration*, and recognizes that,

Allowing for local integration, where applicable, is an act of States which is a durable solution for refugees that contributes to that burden and responsibility sharing, without prejudice to the specific situation of certain developing countries facing mass influxes.¹⁴⁹

Refusing to facilitate or delegate the responsibility to uphold the values and purpose of the CRC and Refugee Convention violates the international law of treaties. Though an international police force does not exist, Egypt is held to the international principle of “good faith” to offer the Right to leisure to children within its territory—citizen or not. The alternative option is to delegate the responsibility if Egypt cannot or simply refuses to perform by the principles and purpose of the treaties. Delegation ensures that the refugee children in Egypt have access to the human rights that they are entitled to.

¹⁴⁶ Vienna Convention on the Status of Treaties, Art. 12, 23 May 1969.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ UNHCR, *Conclusion on Local Integration*, 7 October 2005, No. 104, *See at:* www.refworld.org/docid/4357/a91b2.html [accessed 16 May 2013].

Additionally, the Egyptian government can thus, assert its assent to international law. While the Egyptian Government may not be capable of directly allocating the components necessary to achieving the Right to leisure and play for refugee children, the State can make a few simple gestures in widening the potential for access to such rights.

To begin with, Egypt's Non-Governmental Organization (NGO) laws can be reformed and relaxed to allow more NGO's to provide services to refugee children. This will help to fill in the gaps in the provision of services that the State itself is failing to provide according to the international covenants. However, this important step stands in the wake of a newly proposed NGO law, which aims to place tighter restrictions on NGO's functioning within Egypt. The Cairo Institute for Human Rights (CIHR) states, "the draft law is an attempt to 'nationalize' and 'control' the civil society organizations,"¹⁵⁰ and called it "'the worst law' that had been drafted in the history of NGOs in Egypt." CIHR also pointed out that the new law "considers the NGOs' funds as public money, while before it was the citizens' money."¹⁵¹ Such a shift shortens the distance between government and independent administration of the organization. Thus, NGO's will most likely continue to be obstructed in their efforts to create change. In February 2013, Amnesty International stated,

We're urging the Egyptian authorities to ensure that any legislation to replace the NGO law is in line with international law, respects the rights to freedom of expression and freedom of association, and is based on transparent consultations with human rights organizations and other NGOs.¹⁵²

In March 2013, the Egyptian Organization for Human Rights (EOHR) sent a list of requests and advice to the head of Egypt's Shura Council regarding the currently proposed revisions to Egypt's NGO law no. 84, of the year 2002.¹⁵³ The EOHR expressed concern over the right of the Shura Council to refuse NGO registration, fine NGO executive members up to 100,000 Egyptian Pounds and imprison them for a

¹⁵⁰ Shaimaa Behery, *NGOs bill sparks fears in Egypt over freedom*, Sina News English, 31 March 2013, *See at:* <http://english.sina.com/world/2013/0331/577125.html> [accessed 15 April 2013].

¹⁵¹ *Id.*

¹⁵² Omar Robert Hamilton, *Egypt Hits 'new low' on NGO Restrictions*, Amnesty International, Feb. 2', 2013, *See at:* <http://www.amnesty.org/en/news/egypt-hits-new-low-ngo-restrictions-2013-02-21>

¹⁵³ MEMO, Africa News, *EOHR Memorandum on NGO's Law to Shura Council*, 31 March 2013, *See at:* <http://en.eohr.org/2013/03/31/eohr-memorandum-on-ngos-law-to-shura-council/> [accessed 15 April 2013].

maximum of six months for a wide range of violations of the NGO law.¹⁵⁴ The EOHR also recommended that the law allow NGO's to, *inter alia*, have freedom in establishment, unconditional registration, large or small number of members and to handle a variety of activities in the various social, cultural and political realms.¹⁵⁵ The EOHR also insisted that the Shura Council cancel its "right to review narrative and financial documents of NGOs [and] dissolving NGOs or even freezing activities."¹⁵⁶ In addition to the above mentioned suggestions, the EOHR also requested that,

NGOs' activities are duty-free, NGOs are allowed to receive funds and donations from local and international individuals or agencies, have freedom of assembly and expression, [that their] meetings and activities of NGOs [do] not come under the restrictions of demonstration laws, and [they] are allowed to issue publications, reports, statements, press releases and newsletters without prior permissions.¹⁵⁷

All the above recommendations can make a huge difference in NGO efficiency in Egypt. Obviously, the Egyptian government cannot allow NGOs to function above the law, yet at the same time, the NGOs should neither be so tightly controlled nor influenced by the government. The above reforms require that the government reduce its vast intrusion into NGO activities, and allow them to function as their categorization infers: non-governmentally. In doing so, the Egyptian Government can delegate to NGOs the responsibility of providing access to the Right to leisure for refugee children in Egypt.

Currently, several Community Based Organizations (CBOs) offer leisure and recreation programs specifically targeting refugee children in Cairo. The CBOs function out of make-shift refugee community centers, which are regulated entirely by the refugee communities. The CBOs receive funding from the United Nations High Commissioner for Refugees (UNHCR) office in Cairo, as well as two NGOs: (1) the Psycho-Social Training Institute in Cairo and (2) Tadamon. The CBOs offer sports programs for refugees for most of the year, but are restricted from accessing proper facilities and adequate funding from foreign donors. Currently they are attempting to access the

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

government and private sporting clubs by creating programs for both Egyptian and refugee children together.

For example, one of the Egyptian-Refugee programs, *Tawasul*,¹⁵⁸ has been running since December 2012 under a grant from Tadamon and a Swiss NGO. No funding or support is received from the Egyptian State. The program attempts to create a “connection” (*Tawasul* means “connection” in Arabic) between the refugee and Egyptian children living in the same neighborhoods. The goal is to initiate the process of integration, which is one of the more difficult aspects of the Refugee Convention to realize in Egypt. The children spend two hours playing games which focus on teamwork and cooperation. A passer-by will take joy in the laughter and smiles, yet notice that all of the refugee children are on one team, while all of the Egyptian children are on the opposing team. There is rarely integration, even when the children are forced to intermingle. After eight weeks of participation in the program, little had changed in terms of integration, but the refugee children were noticeably more comfortable entering the sports club. The club became a place where their presence became normalized and welcome by workers, club patrons and their Egyptian playmates. Programs like *Tawasul* give refugee children in Egypt access to their Right to leisure. Refugee children gain feelings of acceptance and inclusiveness and are able to obtain a bit of childhood happiness. Such programs allow refugee children to attain their human rights without the involvement of action of the Egyptian State.

There are also successful models that demonstrate the delegation of State responsibility to universities and international organizations. A program called “Fun Days Out,” has been running out of the Department of Social Work at Flinders University in South Australia

¹⁵⁸ *Tawasul* is a new initiative program by the Psycho-Social Institute in Cairo. The author of this thesis volunteered with the program run in the neighborhood of Ard El-Lewa in Mohandiseen. The author led the games for 2 hours every week with a group of girls: approximately 20 Egyptians and 25 Refugees. The refugee group was a mix of Somalis, Eritreans, Ethiopians and Sudanese between the ages of 3 and 21. The games varied from simple team races to tag games, soccer, and kickball. The author attempted to introduce the group to new games, so that they would focus more on the rules as opposed to their ethnic and cultural differences in the group.

since 2003.¹⁵⁹ The program “[provides] young refugees with opportunities for personal growth and confidence building and for exploration of their new environment.”¹⁶⁰ The program combines their scientific research to emphasize “recreational play as a means for the children to guide their own healing and integration.”¹⁶¹ The Flinders University Social Work professors concluded that providing therapy “in the context of fun increases the possibility that the new environment will be seen positively and as a friendly, easily accessible place to live.”¹⁶² Through research, the Department of Social Work has found that allowing the refugee children to choose which activities to play, then to participate freely has “[assisted] individuals to move beyond a victim identity and to explore their own power and agency in altering their circumstance. The department’s research also claims that the neurotransmitters released during play “could bring appreciable longer-term benefits to the participants.”¹⁶³ The Flinders University’s “Fun Days Out” program has had a powerful impact in influencing the integration and rehabilitation for approximately 4,000¹⁶⁴ refugee children.

A similar program was established in 2010, at the American University in Cairo by the Black Student Association.¹⁶⁵ The Black Student Association is a student group that is entirely run and facilitated by the university’s students. Each semester, the Black Student Association hosts a “Refugee Play Day,” where refugee boys and girls are invited to the campus to participate in sports and physical activities. The activities are led by experienced volunteer instructors and include: yoga, dance, martial arts, basketball, soccer and ultimate frisbee. The children are elevated from their “experiences of depression and anxiety, and the suffering of ongoing, untreated trauma.”¹⁶⁶ During the

¹⁵⁹ Lorna Hallahan and Carol Irizarry, “Fun Days Out: Normalising social experiences for refugee children,” *Journal of Family Studies*, Vol. 14.1, 2008, p.124.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Hallahan and Irizarry, *Supra* note 160, p.125.

¹⁶⁴ *Id.*

¹⁶⁵ Carrie L. Johnson, the author of this thesis, is the founder of the Black Student Association at the American University in Cairo. The organization was founded as a response to the unique and often ignored experience of Black students on campus. The organization’s aim is to bring diversity awareness to the campus, while sharing Black cultures with the AUC community.

¹⁶⁶ Hallahan and Irizarry, *Supra* note 160, p.126.

day, they receive a free sports gift, lunch and chauffeured in stylish buses from their home to the university campus. The Black Student Association aims to achieve the directive of the Right to leisure by providing refugee children the opportunity to relax and play in a safe and clean environment.

In addition to universities, international organizations have the capacity to assist when the State fails to observe its responsibility in providing the Right to leisure for refugee children. Since 2000, the international organization, Right to play, has been building capacity in children through sports in twenty countries in Africa, Asia, the Middle East and South America. The organization works with the country's Minister of Education to "use sport and play to educate and empower children and youth to overcome the effects of poverty, conflict and disease in disadvantaged communities."¹⁶⁷ Such collaboration with an International Organization and the Government could result in the fulfillment of the Right to leisure obligations.

¹⁶⁷ Right to play International, "Mission, Vision, and Values," *See at:* <http://www.righttoplay.com/International/about-us/Pages/mission.aspx> [accessed: 11 May 2013].

V. Conclusion

Leisure is an international right that provides refugee children with the tools to overcome trauma. The Right to leisure also offers them the opportunity to integrate into their host community, which is one of the durable solutions set out in the Refugee Convention. The Egyptian government struggles to provide economically for its own citizens and cannot be expected to allocate resources necessary to comply with the impudent demands of international law. As a result of this economic incapacity and reservations made to certain international conventions, the Egyptian State should rely on the partnership of civil society and international organizations to adequately supply refugee children with access to the right to leisure. The Egyptian State can partner with non-governmental bodies and delegate such responsibility to Community-Based Organizations, NGOs and local universities. For such a partnership to prevail, the Egyptian State must adjust its NGO laws in a positive manner that encourages NGOs to work toward furthering the access to recreation spaces for refugee children. Alongside loosening the domestic laws which regulate NGOs, the Egyptian state should work towards giving refugee children unrestricted access to government-run sporting clubs in neighborhoods where large refugee populations reside.